

## In the United States Court of Federal Claims

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VICTORIA LEMING and KEVIN LEMING,  
Parents and Natural Guardians of A.L.,  
A Minor,

Petitioners,

v.

SECRETARY OF HEALTH AND HUMAN  
SERVICES,

Respondent.

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No. 18-232V  
(Filed: June 11, 2024)

### ORDER

On April 15, 2024, the United States Court of Appeals for the Federal Circuit reversed this Court’s decision granting the Secretary’s motion for review of the Special Master’s decision on entitlement. See Leming v. Sec’y of Health & Hum. Servs., 98 F.4th 1107 (Fed. Cir. 2024).<sup>1</sup> In its opinion, the court of appeals determined that “the bone marrow aspiration and biopsy performed on A.L. was a surgical intervention” and held that “undisputed facts on their face” support that A.L. satisfied the “surgical intervention” severity requirement of 42 U.S.C. § 300aa-11(c)(1)(D)(iii). Id. at 1113. The court of appeals therefore reversed this Court’s determination that A.L. does not satisfy 42 U.S.C. § 300aa-11(c)(1)(D)(iii), see ECF No. 81, and remanded the case for further proceedings consistent with its opinion. See id.

Pursuant to the court of appeals’ opinion: (1) the August 12, 2022 judgment dismissing the petition, ECF No. 109, is **VACATED**; (2) this Court’s June 16, 2021 opinion and order granting the Secretary’s motion for review, ECF No. 81, is **WITHDRAWN**; and (3) the Secretary’s motion for review, ECF No. 75, is **DENIED**

The Clerk of Court is therefore directed to enter judgment in accordance with the Chief Special Master Corcoran’s February 23, 2021 damages decision, ECF No. 74.

**IT IS SO ORDERED.**

s/ Elaine D. Kaplan  
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ELAINE D. KAPLAN  
Chief Judge

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<sup>1</sup> The Federal Circuit issued its mandate on June 6, 2024. See ECF No. 120.